HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
And
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.12050 OF 2007

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Between:

M/s. Salute Beverages (P) Ltd.,
Represented by its Managing Director,
Garlapati Lakshmana Swamy

..... Petitioner

AND

The Commercial Tax Officer,
Lalapet Circle,
Guntur and 2 others.

.....Respondents

::ORDER::

Counsel for the Petitioner : Sri.M.V.J.K.Kumar

Counsel for the Respondents : Government Pleader for
Commercial Taxes.

Dated 7-8-2007

Per Sri G.S.Singhvi, CJ

This is a petition for quashing notice dated 15.5.2007 issued by Commercial Tax Officer, Lalapet Circle, Guntur (respondent No.1 herein) to the petitioner to pay an amount of Rs.3,58,46,739/-, which it had not deposited in view of the tax deferment sanctioned by the State Level Committee (SLC) and the eligibility certificate dated 18.5.1999 issued by Commissioner of Industries, Andhra Pradesh (respondent No.2).

The petitioner is engaged in the manufacture of fruit juice under the brand name "Frooti". On an application made by the petitioner, the SLC decided to grant it the benefit of tax deferment to the tune of Rs.8,38,78,720/- for a period of 14 years commencing from 23.12.1998. Thereafter, respondent No.2 finally issued the eligibility certificate, Clause 11 of which reads as under:

"11. Conditions for availing the incentives:

i) In case of Sales Tax deferred total Sales Tax deferred in a year should be repaid at the end of 14th year without interest.

ii) In case of non-remittance of the Tax on the due date, an interest of 21.5% or as decided by the Govt. from time to time will be charged from the due date till the date of payment. The Govt. will have the right to recover such amounts due under this account treating the same as arrears of land revenue under A.P.R.R. Act, 1864.

iii) The Sales Tax incentives should be utilized for the development of industry only and should not be utilized

for any other purpose.

iv) The Unit should be in continuous production till dated:22/12/2006.

v) The Unit shall not change the location or management till dated:22/12/2006.

vi) The SSI unit is not entitled to collect Sales Tax from the consumers and further they would be liable to remit the sales tax collected to Govt. in case they collect sales tax during the availment period of sales tax exemption."

After three years, the petitioner signed agreement dated 5.7.2002 with the Government of Andhra Pradesh through Deputy Commissioner of Commercial Taxes, Guntur Division, Guntur, as nominated by the Commissioner of Commercial Taxes, Hyderabad for treating the deferment of Sales-tax as government loan. For the sake of convenience, the relevant extracts of the agreement are reproduced below:

"WHEREAS – M/s Salute Beverages (P) Limited, Edulapalem, Guntur District established a new industrial Unit at Edulapalem, Prathipadu Mandal, Guntur District and have commenced production of their products at the new unit with effect from 23-12-1998.

WHEREAS THE GOVERNMENT HAVE, by their G.O.Ms.No.108, Inds. & Com. (IP) Dept. Dt.20-05-1996 and G.O.Ms.No.134, Inds. & Com (IP) Dept., Dt.01-07-1996 directed that deferral of Sales – Tax will be given for new Industries for a period of 14 years and the total amount thus given deferral shall not exceed the amount specified in the eligibility certificate issued by the Commissioner of Industries, Hyderabad and whereas Government have further directed in G.O.Ms.No.187, Inds. & Com (IP) Dept., Dt.: 21-11-1995 that the amount of Sales Tax deferred shall be treated as deemed to have been paid on condition that an identical amount is treated as Government Loan extended to the assessee which shall be payable to the Government by the assesses after the completion of the period of deferralof fourteen (14) years in as many annual installments as the number of years for which tax deferment is allowed without interest, along with the Sales Tax payable for the current year.

WHEREAS M/s.Salute Beverages (P) Limited, Edulapalem have applied for deferral of tax (the expression tax wherever it occurs in this agreement shall include Sales Tax, Surcharge, additional Surcharge, additional Sales Tax and Central Sales Tax) to the party of the First Part and have also produced the eligibility certificate issued by the Commissioner of Industries.

NOW THEREFORE IT IS AGREED BETWEEN THE PARTIES AS UNDER:

1. The Sales Tax due on the sales of the products manufactured by the party of second part in their premises shall be deemed to have been paid to the Assessing Authority subject to ceiling as specified in the eligibility certificate issued by the Commissioner of Industries and an identical amount shall be treated as Government loan.
2. The party of the second part agrees to repay the Government Loan in annual installments the first year's loan (i.e. year 1998-99) will be paid back in lump sum in the 2012th year January month along with the tax payable for the corresponding month i.e. for the month of December 2011 (on or before 20-01-2012), the second year's loan (i.e. year 1999-2000) in lump sum in the 2013th year January month along with the tax payable for the corresponding month i.e. for the month of December 2012 (on or before 20-01-2013) and so on read with G.O.Ms.No.183, Ind & Com (IP) Dept., Dt:21-11-1995.
3. In the case of the default in payment of government Loan, the party of the second part undertakes that:-
   a) The movable and immovable properties of the company or their chairman and Directors shall be liable to be attached/proceeded towards the realization of outstanding Government Loan as arrears of land revenue under Andhra Pradesh Revenue Recovery Act, 1864 together with interest at 21.5% per annum calculated from the due date for repayment of loan. The term movable shall include Cash/shares/debentures/bank balances etc.
4. **The party of the second part shall not alienate/dispose/encumber/ lease out the said fixed assets until the Government loan is fully repaid nor shall it remove the fixed assets from the units premises without the express prior permission from the party of the first part who in turn shall obtain appropriate orders from the Government for the same.**
5. The party of the second part shall insure the fixed assets at the value not less than the value certified by the Commissioner of Industries and keep the insurance policies alive by renewing it every year until the Government loan fully repaid. The insurance policy/renewed policy shall be produced for inspection to the party of the first part before 30th June of every year.
6. The party of the second part shall maintain the fixed assets in good condition so that the market value of assets is maintained from time to time.
7. The party of the second part shall furnish to the party of the first part the audited balance sheet and profit and loss account, certified by the chartered accountant within six months of the close of the financial year.
8. **In case of default of any of the conditions mentioned in para 3, 4, 5, 6 and 7 above, the deferral thus granted shall be cancelled for the entire period for which the same was granted.**

In default of repayment of Government loan or cancellation of the deferral facility for violation of any of the conditions as mentioned in 3, 4, 5, 6 and 7 such government loan, tax and interest due, thereon, shall be recoverable in such manner as specified under Revenue Recovery Act for the loan and Section 17 of the APGST ACT, 1957 for the tax, and the amount is also liable for 21.5% interest per annum.

IN WITNESS WHEREOF GOVERNMENT OF ANDHRA PRADESH represented by Sri D. Rama Chandra Reddy, Deputy Commissioner of Commercial Taxes, Guntur Division, Guntur and Sri Garlapati Lakshmana Swamy representing M/s.Salute Beverages (P) Limited, Edulapalem have set their hands on the day, month and year first above written."

The petitioner availed the benefit of deferment of State Sales-tax, Central Sales-tax and VAT tax to the tune

of Rs.3,58,46,739/- for the period between 1998-99 to 2005-06. The particulars of deferment of the various taxes are as under:

S.No.	Year	Deferment availed under		Total
		A.P.G.S.T.	C.S.T.	
1)	1998-1999	37,49,763	Nil	37,49,763/-
2)	1999-2000	1,01,36,664	5,39,544	1,06,04,205/-
3)	2000-2001	1,12,52,836	5,39,544	1,17,92,380/-
4)	2001-2002	58,79,672	5,06,015	63,85,687/-
5)	2002-2003	18,45,388	58,154	19,03,542/-
6)	2003-2004	1,92,522	6,28,436	8,20,958/-
7)	2004-2005	32,441	1,923	34,364/-
8)	2005-2006 (APVAT)	5,55,840	Nil	5,55,840/-
	Total:	3,36,45,126	22,01,613	3,58,46,739/-

In June 2005, the petitioner stopped production and also sold away machinery worth Rs.77 lakhs without obtaining permission from the competent authority of the Commercial Taxes Department. These facts were incorporated in report dated 9.2.2007 submitted by the Regional Vigilance and Enforcement Officer, Guntur. Respondent No.1 inspected the factory premises of the petitioner on 17.4.2007 and recorded the statement of its representative Shri G. Subba Rao, who gave out that there is no manufacturing activity since December 2005 and that the petitioner had sold away machinery worth Rs.77 lakhs. Thereafter, respondent No.1 issued notice dated 25.4.2007 to the petitioner and called upon it to deposit the entire amount of tax, which had not been collected in terms of the eligibility certificate. The petitioner filed reply dated 7.5.2007. It relied on the judgments of the Supreme Court in **Vadilal Chemicals Ltd. v. State of Andhra Pradesh**[1] and of this Court in **Vetstar Agros Pvt. Ltd. v. C.T.O. and another**[2] and claimed that respondent No.1 does not have the power to withdraw the benefit availed in terms of the eligibility certificate issued by respondent No.2. Respondent No.1 did not accept the petitioner's contention and issued notice dated 15.5.2007, which reads as under:

Office of the Commercial Tax Officer,

Lalapet Circle, Guntur,

Dated: 15-05-2007

N O T I C E

M/s.Salute Beverages Pvt. Ltd., Edulapalem, Guntur is hereby informed that a notice has been issued to them by this office on 25-04-2007 proposing recovery of sales tax deferment of Rs.3,58,46,739/- availed by you up to November, 2005, since you have stopped the production and thereby violated the condition of continuous production from 26-04-1999 to 25-04-2006. The notice has been served on you on 02-05-2007, in response you have replied that the issue of notice is illegal and against the judgment delivered by the Hon'ble Supreme Court reported in 142 STC p.71 in the case of 'Vadilal Chemicals Ltd., and another judgment of A.P. High Court in the case of 'Vetstar Agro Ltd.' reported in 33 APSTJ 50 and the judgment of the Hon'ble High Court of A.P. dt. 17-01-2005 in your case.

In this connection, it is informed that the judgment in the case of Vetstar Agro Ltd. and in the case of Vadilal Chemicals Ltd. is not relevant in this case. Moreover, the Hon'ble High Court of A.P. has recently delivered the judgment in the case of M/s.Visakha Cements (P) Ltd., Polipalli, Vizianagaram Dst., vs. The Commissioner of Industries and others reported in 43 STJ 129, the Hon'ble High Court upheld the action of the Sales Tax authorities in resorting to recovery of tax when there is stoppage of production by the industries. Further, as seen from the Final Eligibility Certificate issued by the Commissioner of Industries, Hyderabad in File No.20/3/0369, dated 18-5-1999 it is noticed that you have violated the clause 11 (iv) i.e. the unit should be in continuous production till dated 22-12-2026 and also you have sold out the machinery worth Rs.77,00,000/- to the out of State dealers without prior intimation or permission either from the Industries Department or Commercial Taxes Department.

Thus, you have violated the clause IV of the agreement entered by you with the Department. So, you are hereby requested to pay the entire amount of Rs.3,58,46,739/- that was availed by you towards sales tax deferment within 7 (seven) days of the receipt of this notice, failing which action will be initiated under Revenue Recovery Act."

The petitioner has questioned the notice mainly on the ground that respondent No.1 does not have the jurisdiction, power or authority to take action on the pretext of violation of the conditions embodied in the eligibility certificate. According to the petitioner, the Industries Department alone has the power to take action for cancellation of the eligibility certificate and till that is done, the authorities of the Commercial Taxes Department cannot compel it to pay the tax, which was not deposited in view of the deferment granted in furtherance of the policy framed by the State Government.

The case of the respondents is that the impugned notice has been issued because the petitioner not only stopped the manufacturing activity since December, 2005, but also sold away machinery worth Rs.77 lakhs vide Invoice No.3, dated 30th March, 2005 without obtaining permission from the competent authority. In paragraphs 9 and 10 of the affidavit filed by him, Shri M. Subrahmanyam, who is presently holding the post of Commercial Tax Officer, Guntur, has averred as under:

9. In reply to Paras 3.2, 3.3 and 3.4 it is submitted that the issue in W.P.No.11332/04 is totally different from the present one. This respondent has issued only a notice requesting the petitioner to pay the amount availed as deferment to safeguard the loan extended to the petitioner in the form of sales tax deferment. No coercive steps such as attachment and sale of movable and immovable properties of the petitioner have been initiated so far. The Deputy Commissioenr (CT), Guntur Division, Guntur has also addressed a letter to the Commissioner (CT), A.P., Hyderabad to get the certificate issued to the petitioner cancelled by the Industries Department.

10. In reply to para 3.5 it is submitted that as per the agreement dt.05.2.2000 entered into by the petitioner with the Deputy Commissioner (CT), Guntur Div., Guntur, the petitioner shall not alienate/dispose/encumber/lease out the assets until the Government loan is fully repaid nor shall it remove the assets from the unit premises without the prior permission from the Deputy Commissioner. But the petitioner has sold away the machinery without prior intimation to the department on 30.3.2005 to a party outside the State without any permission or prior intimation to the Department and failed to disclose the turnover of such sale in the form CST VI return filed for the month of March 2005. He has also not paid the tax payable on the sales of said machinery voluntarily. The dealer ultimately paid the tax by way of cheque No.666497, dt.26.4.2007. Thus, he violated the terms and conditions of the agreement entered into with the department by alienating the machinery.

Shri M.V.J. K. Kumar argued that the impugned notice is liable to be declared nullity because respondent No.1 does not have the jurisdiction, power or authority to directly or indirectly withdraw the benefit of tax deferment availed by the petitioner in terms of eligibility certificate dated 18.5.1999 issued by respondent No.2. In support of this contention, the learned counsel relied on the judgment of the Supreme Court in **Vadilal Chemicals Ltd. v. State of Andhra Pradesh** (supra) and of this Court in **Prabha Enterprises v. D.C.T.O.**[3], **Vetstar Agros Pvt. Ltd. v. C.T.O. and another** (supra) and order dated 07.1.2005 passed in Writ Petition No.11332 of 2004. Shri M.V.J.K. Kumar emphasized that in terms of the policy framed by the government to encourage industrialization of the State, the sole repository of power to grant or withdraw the benefit of tax deferment is SLC and argued that the action initiated by respondent No.1 for compelling the petitioner to deposit the tax is liable to be declared as without jurisdiction and quashed.

The learned Government Pleader for Commercial Taxes relied on the loan agreement dated 05.7.2002 entered into between the petitioner and the State Government whereby the deferred sales tax was treated as government loan and argued that respondent No.1 did not commit any illegality by requiring the petitioner to pay the amount of tax on the ground of violation of Clause 4 of the loan agreement. Learned Government Pleader further argued that the impugned notice cannot be quashed because the petitioner not only stopped production in violation of the conditions incorporated in the eligibility certificate, but also sold away the machinery worth Rs.77 lakhs without obtaining permission from the competent authority of the Commercial Tax Department and the State Government. In the end, he argued that the action taken by respondent No. 1 in accordance with the conditions of the loan agreement cannot be nullified on the ground of lack of jurisdiction.

We have considered the respective submissions. The proposition of law laid down in the judgments of the Supreme Court in **Vadilal Chemicals Ltd. v. State of Andhra Pradesh** (supra) and of this Court in **Prabha Enterprises v. D.C.T.O.** (supra), **Vetstar Agros Pvt. Ltd. v. C.T.O. and another** (supra) and the order passed in the petitioner's own case i.e. Writ Petition No.11332 of 2004, namely, that the authorities of the Sales Tax Department cannot tinker with the eligibility certificate issued by the Industries Department and withdraw the benefit of tax exemption/deferment availed in terms of the policy of deferment framed by the government is unexceptionable, but we do not find any merit in the petitioner's challenge to the action initiated by respondent No.1 in terms of Clause 4 of the loan agreement dated 5.7.2002.

It is not in dispute that in terms of the policy contained in G.O.Ms.No.108, dated 20.5.1996 and G.O.Ms.No.134, dated 1.7.1996, the petitioner was required to enter into a loan agreement as a part of the scheme

of tax relief granted by way of deferment. It is also not in dispute that the petitioner did execute loan agreement dated 5.7.2002, Clause 4 of which contains a prohibition against alienation, disposal or leasing out of the fixed assets or creation of encumbrance over it until the repayment of government loan except with the express permission from the competent authority of the department and approval of the State Government. Clause 8 of the loan agreement, which is couched in mandatory form, lays down that in case of violation of the conditions mentioned in Clauses 3 to 7, the deferment shall be cancelled.

A reading of the impugned notice shows that the action for cancellation of deferment has been taken by respondent No.1 because the petitioner acted in violation of Clause 4 of the loan agreement. This has nothing to do with the eligibility certificate dated 18.5.1999 issued by respondent No.2.

It is neither the pleaded case of the petitioner nor

Shri M.V.J.K. Kumar argued that after cessation of the production, his client had sold away assets worth Rs.77 lakhs without obtaining prior permission from the competent authority of the Commercial Tax Department and appropriate order from the government. Therefore, there is no escape from the conclusion that the action initiated by respondent No.1 is in accordance with the conditions of loan agreement dated 5.7.2002 and the impugned notice cannot be quashed by applying the ratio of the Supreme Court's judgment in **Vadilal Chemicals Ltd. v. State of Andhra Pradesh** (supra) and two judgments of this Court in **Prabha Enterprises v. D.C.T.O.** and **Vetstar Agros Pvt. Ltd. v. C.T.O. and another** (supra).

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP No.15001 of 2007 filed by the petitioner for interim relief is also dismissed.

CJ

August 07, 2007

C.V.NAGARJUNA REDDY, J

svs

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[1] 142 STC 76

[2] 33 APSTJ 50

[3] 1991 (13) APSTJ 234